

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>10/6/2023</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVIN HOLMES,

Plaintiff,

-against-

DR. ROBERT BENTIVEGNA; DR. JOHN
MORLEY; DR. SILVER; JANE DOE NURSE;
JACK JOHNSON; NEW YORK STATE
DEPARTMENT OF CORRECTIONS,

Defendants.

23-CV-5462 (NSR)

SUPPLEMENTAL ORDER OF
SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, who is currently incarcerated at Green Haven Correctional Facility, brings this action *pro se*. He asserts claims under 42 U.S.C. § 1983 for deliberate indifference to his serious medical needs. By order dated July 31, 2023, the Court granted Plaintiff’s request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees.¹ By further order dated August 7, 2023, this Court directed service be effected upon Defendants John Morley, Robert Bentivegna, and Lester Silver through the U.S. Marshals Service. (ECF No. 7.) The Court also directed the New York State Attorney General (“NYAG”) to “identify the Jane Doe nurse who drew a blood sample from Plaintiff on October 19, 2019, at Green Haven Correctional Facility.” (*Id.*) In addition, the Court directed NYAG to ascertain the address of Defendant Jack Johnson. (*Id.*) NYAG responded to the Court’s order through letters dated September 11, 2023; October 2, 2023, and October 3, 2023, respectively. (ECF No. 10, 12–13.)

¹ Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

Based on the information provided by NYAG regarding the identity of the “Jane Doe nurse,” the Clerk of the Court is instructed to add Andrea Barrett as a Defendant to the caption and the docket.

Moreover, to allow Plaintiff to effect service on Defendants Andrea Barrett and Jack Johnson through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (USM-285 form) for each of these Defendants.² The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

CONCLUSION


The Clerk of Court is kindly instructed to issue summonses for Defendants Andrea Barrett and Jack Johnson, complete the USM-285 forms with the addresses for these defendants, and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Clerk of the Court is further instructed to add Andrea Barrett as a Defendant to the caption and the docket.

The Clerk of Court is respectfully directed to mail a copy of this Order to *pro se* Plaintiff at Plaintiff’s address listed on ECF and to show service on the docket.

SO ORDERED.

Dated: October 6, 2023
White Plains, New York



NELSON S. ROMÁN
United States District Judge

² If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service). Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

DEFENDANTS AND SERVICE ADDRESSES

1. Andrea Barrett
New York State Department of Corrections and Community Supervision
Office of Counsel c/o Deputy Counsel Mark Richter
The Harriman State Campus, Building 4
1220 Washington Avenue, Albany, NY 12226
2. Jack Johnson
Eastern Correctional Facility
30 Institution Road, Napanoch, NY 12458